

**DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE AND SECURITIES REGULATION**

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Commissioner of the Department of Insurance and Securities Regulations, pursuant to the authority set forth in §§ 101 (9) and 125 of the Insurance Trade and Economic Development Act of 2000, effective April 3, 2001 (D.C. Law 13-265; D.C. Official Code §§ 31-2231.01 (9) and 31-2231.25), hereby gives notice of the adoption of emergency rules to be included in Title 26, Chapter 50 of the District of Columbia Municipal Regulations (“DCMR”). These rules were adopted on an emergency basis to prevent insurers from using weather related claims from Hurricane Isabel, which occurred on September 17-18, 2003, as grounds to non-renew or deny homeowners’ insurance to District of Columbia residents. Because many homeowners’ insurance policies are now coming up for renewal following the filing of Hurricane Isabel-related claims, the adoption of these rules is necessary to prevent the nonrenewal of insurance policies for impermissible reasons. Accordingly, the immediate protection of the public welfare justifies emergency action.

The Commissioner also gives notice of his intent to take final rulemaking action to adopt the proposed rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. These rules will provide the bases upon which insurers may properly non-renew homeowners’ insurance, and use claims information from databases.

These emergency rules were adopted and became effective on December 19, 2003, and will expire 120 days after their effective date, or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first. If the effective date is declared invalid by a final and unappealable court order, then the emergency regulations shall be effective on the date of publication of this notice.

Emergency rules on this subject were previously adopted on September 17, 2003, and were published as a Notice of Emergency and Proposed Rulemaking in the D.C. Register on October 31, 2003 at 50 DCR 9269. Several comments were received from interested parties and substantives changes were made to the rules based on those comments. This second Notice of Emergency and Proposed Rulemaking supersedes the prior emergency rules published October 31, 2003.

26 DCMR is amended by adding a new Chapter 50, Unfair Trade Practices, to read as follows:

**5000 PERMISSIBLE REASONS FOR NON-RENEWAL AND USE OF
CLAIMS HISTORY INFORMATION**

- 5000.1 An insurer shall not refuse to renew a policy of homeowners insurance solely due to claim or loss frequency unless there have been two or more claims during the most recent three-year experience period.
- (a) For purposes of counting the number of claims under subsection 5000.1, the insurer shall not consider the first claim for a loss caused by weather, unless the insurer can provide evidence that the insured unreasonably failed to maintain the property and such failure to maintain contributed to the loss.
 - (b) For purposes of subsection 5000.1, the insurer shall not consider the first claim that was reported to the agent or insurer for which no payment was made by the insurer.
 - (c) For purposes of subsection 5000.1, the insurer shall not consider a loss for where there was no investigation or other claim activity.
 - (d) For purposes of subsection 5000.1, an insurer shall not count any losses caused by a catastrophic event. A catastrophic event shall be a manmade or natural event that causes \$25 million or more in insured property losses, and affects a significant number of property and casualty policyholders and insurers.

5000.2 Every insurer shall provide a notice to its homeowners insurance policyholders that the insurer considers claims history in determining whether to renew the policy. Such notice may be on the declarations page or on a separate notice that accompanies the policy so long as the notice is conspicuous and includes the following statement: “Your insurer may consider your claims and loss history when determining whether to renew your policy.”

5000.3 An insurer may refuse to renew a policy of homeowner's insurance due to claim or loss frequency based upon standards more restrictive than those set forth in this rule if the insurer has, at the time of policy issuance or renewal, provided the insured with a written copy of the underwriting standards upon which the insurer based its nonrenewal, so long as the standards are conspicuous.

5001 USE OF CLAIMS HISTORY—NEW BUSINESS

5001.1 In determining whether to issue a homeowners' insurance policy on a property not previously owned by the applicant, an insurer shall not base an adverse underwriting decision solely on the loss history of a previous owner of the property to be insured.

5002**EFFECTIVE DATE**

- 5002.1 Sections 5000 and 5001 shall take effect on December 19, 2003 for all homeowners' insurance policies issued or reissued on or after that date, except that the notice to homeowners policyholders described in subsection 5000.2 shall take effect for policies issued or reissued on or after March 1, 2004.